

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16824 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MOHAMMAD FAROOK ALIAS TOLO MOHAMMAD YUSUF SANGHWALA(CHHIP
Versus
STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16824 of 2003
MS KRISHNA U MISHRA for Petitioner No. 1
MR AMRISH K PANDYA for Petitioner No. 1
MR LR PUJARI Ld. AGP for Respondents
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CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 12/02/2004

ORAL JUDGEMENT

1. Heard Mr.A.K.Pandya for Ms.K.U.Mishra, learned
advocate for the petitioner and Mr.L.R.Pujari, learned

AGP for the respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioner has been challenging the order of detention dated 17.4.2003 (Annexure-A) passed by respondent no.2 under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act") and and prays for setting aside of the said order and setting the petitioner at liberty.

3. The say of the petitioner is that the grounds of detention (Annexure-B) suggest that two cases under the provisions of Sections 379 and 114 of the Indian Penal Code and Section 332, 353 and 186 of Indian Penal Code and Section 135(1) and 142 of the Bombay Police Act have been registered against the present petitioner.

In the grounds of detention, two unregistered cases have also been referred to relating to the incident of 20.3.2003 and 5.4.2003 respectively.

4. It is submitted by Mr. Pandya, learned advocate for the petitioner that the registered cases as well as the unregistered cases against the petitioner only relate to the alleged offences under the provisions of the Indian Penal Code and all these acts are allegedly against the individual, and that there is no question of acts being prejudicial to the maintenance of "public order".

5. In the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Others, 2000 (1) GLR 816 it has been observed that, "So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia Vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. ..."

6. As seen above, in the instant case also, the registered as well as unregistered cases are directed against the individuals and following the principles in the case of Ashokbhai Jivraj (supra), the present case would concern the maintenance of "law and order" rather than "public order".

7. In this view of the matter, the respondents could not have resorted to Section 3(2) of the PASA Act and therefore, could not have been passed the order under the maintenance of "public order".

8. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 17.4.2003 (Annexure-A) passed by respondent no.2 against the petitioner -detenu - Mohammad Farook alias Tolo Mohammad Yusuf Saghwala (Chhipa) is hereby quashed and set aside. The petitioner - detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi, J.)

(vipul)